

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of private process servers; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Civil Practice and Remedies Code is amended by adding Title 8 to read as follows:

TITLE 8. CIVIL PROCESS

CHAPTER 191. PRIVATE PROCESS SERVERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 191.001. DEFINITIONS. In this chapter:

(1) "Civil court" includes:

(A) a civil district court;

(B) a family district court;

(C) a county court at law;

(D) a probate court;

(E) a justice court; and

(F) a small claims court.

(2) "Civil process" means a citation, a temporary restraining order, a notice, a writ of garnishment, a writ of forcible entry and detainer, or a subpoena for a trial or for an oral deposition. The term does not include service of written interrogatories or a writ that requires the actual taking of possession of a person, property, or thing.

(3) "Commission" means the Texas Commission of

1 Licensing and Regulation.

2 (4) "Constable" means a constable, deputy constable,  
3 or reserve deputy constable.

4 (5) "Department" means the Texas Department of  
5 Licensing and Regulation.

6 (6) "Executive director" means the executive director  
7 of the department.

8 (7) "License holder" means an individual who has  
9 complied with the licensing requirements of this chapter and has  
10 been issued a license by the department.

11 (8) "Person" means an individual.

12 (9) "Public servant" has the meaning assigned by  
13 Section 1.07, Penal Code.

14 (10) "Registered agent" means an individual who has  
15 complied with the registration requirements adopted under this  
16 chapter and has been issued an agent registration by the  
17 department.

18 (11) "Sheriff" means a sheriff, deputy sheriff, or  
19 reserve deputy sheriff.

20 Sec. 191.002. APPLICABILITY OF CHAPTER. (a) This chapter  
21 does not apply to a sheriff or constable engaged in the discharge of  
22 that person's official duties. A sheriff or constable who serves  
23 civil process other than in the performance of official duties must  
24 be licensed or registered under this chapter.

25 (b) This chapter does not limit or restrict the service of  
26 process in this state as provided by a court order.

27 (c) This chapter does not apply to a court reporter

1 certified under Chapter 52, Government Code.

2 [Sections 191.003-191.050 reserved for expansion]

3 SUBCHAPTER B. LICENSE AND REGISTRATION REQUIREMENTS

4 Sec. 191.051. LICENSE OR REGISTRATION REQUIRED. (a) A  
5 person may not serve civil process in this state unless the person  
6 is licensed or registered under this chapter.

7 (b) A person who is not a license holder or registered agent  
8 and who is not exempt under Section 191.002 may serve outside this  
9 state a civil process issued by a civil court of this state if the  
10 person is:

11 (1) authorized by law, rule, or court order in the  
12 person's jurisdiction to serve process;

13 (2) a disinterested person competent to make an oath  
14 of that fact; and

15 (3) has the return of service acknowledged by an  
16 officer authorized to administer oaths in the jurisdiction in which  
17 the civil process was served.

18 Sec. 191.052. LICENSE APPLICATION; TEMPORARY LICENSE. (a)  
19 An applicant for an initial process server license under this  
20 chapter must submit a sworn application on a form prescribed by the  
21 commission. To be eligible for a license under this section, an  
22 applicant must:

23 (1) be at least 18 years of age;

24 (2) not have been convicted of a misdemeanor involving  
25 moral turpitude or a felony;

26 (3) submit the nonrefundable application fee and the  
27 license fee; and

1           (4) comply with the requirements adopted under  
2 Subsection (b).

3           (b) Each license applicant must provide proof to the  
4 department in a manner acceptable to the department of:

5           (1) completion of a department-approved seminar on  
6 civil process consisting of at least eight hours of instruction;  
7 and

8           (2) maintenance of insurance coverage as required by  
9 rules adopted by the commission.

10          (c) The department shall issue a temporary license not later  
11 than the 30th day after the date an applicant submits evidence  
12 satisfactory to the department that the applicant has properly  
13 completed the application, has paid all required fees, and meets  
14 all of the qualifications established by this chapter and by rule of  
15 the commission. A temporary license is valid for not more than 90  
16 days after the date of issuance. If, on completion of the license  
17 application process, the commission denies an application for a  
18 license, the applicant shall return the applicant's temporary  
19 license and immediately stop serving process under this chapter.

20          Sec. 191.053. AGENT REGISTRATION. (a) A person registered  
21 under this chapter as the agent of a license holder may execute  
22 civil process under this chapter on behalf of the license holder.

23          (b) An applicant for an agent registration shall submit a  
24 sworn application to the department on a form prescribed by the  
25 commission. To be eligible for registration under this section, an  
26 applicant must:

27           (1) be at least 18 years of age;

1           (2) not have been convicted of a misdemeanor involving  
2 moral turpitude or a felony; and

3           (3) submit the nonrefundable application fee and the  
4 registration fee.

5           Sec. 191.054. CRIMINAL HISTORY RECORD CHECK. (a) Each  
6 applicant for a process server license or an agent registration  
7 under this chapter shall disclose to the department in the manner  
8 prescribed by the commission any conviction of the applicant for a  
9 misdemeanor involving moral turpitude or a felony.

10           (b) On receipt of an original application for a process  
11 server license or agent registration, the department shall conduct  
12 a thorough background investigation of each individual applicant to  
13 determine whether the applicant is qualified under this chapter.  
14 The investigation must include:

15           (1) the submission of fingerprints by the applicant  
16 for processing through appropriate local, state, and federal law  
17 enforcement agencies; and

18           (2) the examination by the department of law  
19 enforcement records maintained by a local, state, or federal law  
20 enforcement agency.

21           (c) A background check under this section and the  
22 department's consideration of any criminal conviction is governed  
23 by:

24           (1) this chapter;

25           (2) Sections 411.093 and 411.122, Government Code; and

26           (3) Chapter 53, Occupations Code.

27           (d) The conviction of an applicant of a crime does not

1 automatically:

2 (1) disqualify the applicant;

3 (2) require revocation of a license or registration;

4 or

5 (3) require denial of an application for renewal of a  
6 license or registration.

7 Sec. 191.055. ISSUANCE OF LICENSES AND REGISTRATIONS. (a)

8 The department shall issue a process server license or an agent  
9 registration to an applicant who complies with the appropriate  
10 requirements of this chapter, passes the criminal history record  
11 check, and pays all required fees.

12 (b) Except as provided by Subsection (c), the department  
13 shall issue the license or registration not later than the 60th day  
14 after the date on which the application is received by the  
15 department.

16 (c) If the department is notified by the Department of  
17 Public Safety that a criminal history record check affecting an  
18 applicant will not be completed within the 60 days prescribed by  
19 Subsection (b), the department shall notify the applicant of the  
20 delay.

21 Sec. 191.056. INSURANCE REQUIREMENT. The commission by  
22 rule shall prescribe the insurance coverage that a process server  
23 license holder must maintain to be eligible for a license under this  
24 chapter.

25 Sec. 191.057. TERM OF LICENSES AND REGISTRATION; RENEWAL;  
26 AGENT TERMINATION. (a) A license or an agent registration issued  
27 under this chapter expires on the second anniversary of the date of

1 issuance.

2 (b) The department shall send a renewal application to each  
3 license holder or registered agent not later than the 45th day  
4 before the date of expiration of the license or registration.

5 (c) A license holder or registered agent may renew the  
6 license or registration by submitting to the department before the  
7 expiration date, on a form prescribed by the commission, a renewal  
8 application accompanied by the renewal fee. To renew the license or  
9 registration, each license holder and registered agent must also  
10 present evidence satisfactory to the department of completion,  
11 before the expiration of the license or registration, of a  
12 department-approved continuing education seminar consisting of at  
13 least eight hours of instruction in civil process.

14 (d) A license holder shall notify the department in writing  
15 not later than the 14th day after the date on which the employment  
16 of a registered agent by the license holder is terminated.

17 [Sections 191.058-191.100 reserved for expansion]

18 SUBCHAPTER C. PRACTICE BY LICENSE HOLDERS AND REGISTERED AGENTS

19 Sec. 191.101. POWERS AND DUTIES OF LICENSE HOLDERS AND  
20 REGISTERED AGENTS. (a) A license holder or registered agent may  
21 serve civil process issued by the courts of this state in the manner  
22 provided by law for service by sheriffs and constables. The person  
23 may serve the process on any day of the week anywhere in this state.

24 (b) A license holder or registered agent may determine the  
25 location of an individual for the purpose of serving civil process.

26 (c) A license holder or registered agent may serve a writ of  
27 garnishment, but may not serve a writ of attachment, a writ of

1 sequestration, or a distress warrant.

2 (d) A license holder or registered agent may not serve a  
3 civil process in any action in which the license holder or  
4 registered agent is an interested party.

5 (e) A license holder or registered agent who is employed by  
6 an attorney or a law firm may not serve a civil process relating to  
7 an action in which the employing attorney or law firm is counsel to  
8 a party.

9 Sec. 191.102. COSTS. A fee charged and collected by a  
10 license holder or registered agent for service of process may be  
11 charged as costs in a judicial proceeding.

12 Sec. 191.103. PUBLIC SERVANT; OFFICER OF COURT. Each  
13 license holder and registered agent shall be considered to be a  
14 public servant when performing duties related to serving process  
15 and considered to be an officer of the civil courts of this state,  
16 but may not be considered to be a peace officer based on that  
17 license or registration. An assault on a license holder or  
18 registered agent shall be treated as an assault on a public servant.

19 Sec. 191.104. IDENTIFICATION NUMBER. (a) The department  
20 shall issue to each license holder and registered agent a unique  
21 identification number. The license holder or registered agent  
22 shall list that unique number on each return of service made by that  
23 person that is filed with the clerk of the appropriate court.

24 (b) The department shall issue to each license holder and  
25 registered agent a photo identification card with the person's  
26 unique identification number on the card. The department shall  
27 determine the size, design, and content of the identification card.

1 The card remains the property of the state and must be returned on  
2 demand by the department.

3 [Sections 191.105-191.150 reserved for expansion]

4 SUBCHAPTER D. DEPARTMENT ENFORCEMENT

5 Sec. 191.151. DISCIPLINARY ACTIONS. (a) The commission  
6 may deny, suspend, or revoke a license or registration, as  
7 appropriate, and the commission may impose an administrative  
8 penalty under Subchapter F, Chapter 51, Occupations Code, on a  
9 finding that:

10 (1) a license holder has:

11 (A) failed to maintain the insurance coverage  
12 required by this chapter;

13 (B) refused to permit an examination by the  
14 department of the records required to be maintained by a license  
15 holder under rules adopted under this chapter; or

16 (C) allowed a person to serve process who the  
17 license holder knows is not legally authorized to do so; or

18 (2) a license holder or registered agent has:

19 (A) violated this chapter, a rule adopted under  
20 this chapter, or an order of the executive director or commission;

21 (B) knowingly made a false or fraudulent return  
22 of service; or

23 (C) been convicted of a felony or misdemeanor  
24 that directly relates to the duties and responsibilities involved  
25 in performing the duties of a process server.

26 (b) Proceedings for the denial, revocation, or suspension  
27 of a license or registration, for the imposition of an

1 administrative penalty, and for an appeal from the proceeding are  
2 governed by Chapter 51, Occupations Code, and Chapter 2001,  
3 Government Code.

4 [Sections 191.152-191.200 reserved for expansion]

5 SUBCHAPTER E. PENALTIES

6 Sec. 191.201. CRIMINAL PENALTIES. (a) A person commits an  
7 offense if the person practices as a process server or registered  
8 agent in violation of this chapter or a rule adopted under this  
9 chapter. An offense under this subsection is a felony of the third  
10 degree.

11 (b) A person commits an offense if the person knowingly or  
12 intentionally falsifies a return of civil process. An offense  
13 under this subsection is a Class A misdemeanor unless the person's  
14 intent is to defraud or harm another, in which event the offense is  
15 a state jail felony.

16 SECTION 2. Notwithstanding Section 191.052, Civil Practice  
17 and Remedies Code, as added by this Act, a person who provides proof  
18 to the Texas Department of Licensing and Regulation in a manner  
19 satisfactory to that department of at least two years' experience  
20 in serving civil process before the effective date of this Act is  
21 entitled to a license without complying with the educational  
22 requirement if the person meets all other requirements under that  
23 section.

24 SECTION 3. (a) Except as provided by Subsection (b) of this  
25 section, Chapter 191, Civil Practice and Remedies Code, as added by  
26 this Act, takes effect September 1, 2005.

27 (b) Sections 191.051 and 191.201, Civil Practice and

1 Remedies Code, as added by this Act, take effect March 1, 2006.

2 SECTION 4. Except as provided by Section 3 of this Act, this  
3 Act takes effect September 1, 2005.